



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB1517

Introduced 02/10/05, by Rep. Dan Brady

SYNOPSIS AS INTRODUCED:

New Act
410 ILCS 18/15 rep.

Creates the Disposition of Remains Act. Lists, in order of priority, those persons who have the right to control the disposition, including cremation, of the decedent's remains and who are liable for the costs of disposition, unless the decedent has left written directions for the disposition of his or her remains as provided in the listed Section of the Act or in the Crematory Regulation Act. Provides a form for the appointment of an agent to control the disposition of remains. Provides that a person may provide written directions for the disposition, including cremation, of the person's remains in a will, a prepaid funeral, burial, or cremation contract, or in a written instrument signed by the person and notarized. Amends the Crematory Regulation Act to repeal the Section concerning the priority list for authorizing agents for the cremation of remains.

LRB094 09123 LCB 39353 b

1 AN ACT concerning remains.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Disposition of Remains Act.

6 Section 5. Right to control disposition; priority. Unless a
7 decedent has left directions in writing for the disposition of
8 the decedent's remains as provided in Section 65 of the
9 Crematory Regulation Act or in subsection (a) of Section 40 of
10 this Act, the following persons, in the priority listed, have
11 the right to control the disposition, including cremation, of
12 the decedent's remains and are liable for the reasonable costs
13 of the disposition:

14 (1) the person designated in a written instrument that
15 satisfies the provisions of Sections 10 and 15 of this Act;

16 (2) the decedent's surviving spouse;

17 (3) any person serving as executor or legal representative
18 of the decedent's estate and acting according to the decedent's
19 written instructions;

20 (4) the sole surviving competent adult child of the
21 decedent, or if there is more than one surviving competent
22 adult child of the decedent, the majority of the surviving
23 competent adult children; however, less than one-half of the
24 surviving adult children shall be vested with the rights and
25 duties of this Section if they have used reasonable efforts to
26 notify all other surviving competent adult children of their
27 instructions and are not aware of any opposition to those
28 instructions on the part of more than one-half of all surviving
29 competent adult children;

30 (5) the surviving competent parents of the decedent; if one
31 of the surviving competent parents is absent, the remaining
32 competent parent shall be vested with the rights and duties of

1 this Act after reasonable efforts have been unsuccessful in
2 locating the absent surviving competent parent;

3 (6) the surviving competent adult person or persons
4 respectively in the next degrees of kindred or, if there is
5 more than one surviving competent adult person of the same
6 degree of kindred, the majority of those persons; less than the
7 majority of surviving competent adult persons of the same
8 degree of kindred shall be vested with the rights and duties of
9 this Act if those persons have used reasonable efforts to
10 notify all other surviving competent adult persons of the same
11 degree of kindred of their instructions and are not aware of
12 any opposition to those instructions on the part of one-half or
13 more of all surviving competent adult persons of the same
14 degree of kindred;

15 (7) in the case of indigents or any other individuals whose
16 final disposition is the responsibility of the State or any of
17 its instrumentalities, a public administrator, medical
18 examiner, coroner, State appointed guardian, or any other
19 public official charged with arranging the final disposition of
20 the decedent;

21 (8) in the case of individuals who have donated their
22 bodies to science, or whose death occurred in a nursing home or
23 other private institution, who have executed cremation
24 authorization forms under Section 65 of the Crematory
25 Regulation Act and the institution is charged with making
26 arrangements for the final disposition of the decedent, a
27 representative of the institution; or

28 (9) any other person or organization that is willing to
29 assume legal and financial responsibility.

30 As used in Section, "adult" means any individual who has
31 reached his or her eighteenth birthday.

32 Section 10. Form. The written instrument authorizing the
33 disposition of remains shall be in substantially the following
34 form:

1 "APPOINTMENT OF AGENT TO CONTROL DISPOSITION OF REMAINS

2 I,, being of sound
3 mind, willfully and voluntarily make known my desire that,
4 upon my death, the disposition of my remains shall be
5 controlled by (name of agent) and,
6 with respect to that subject only, I hereby appoint such
7 person as my agent (attorney-in-fact). All decisions made
8 by my agent with respect to the disposition of my remains,
9 including cremation, shall be binding.

10 SPECIAL DIRECTIONS:

11 Set forth below are any special directions limiting
12 the power granted to my agent:
13
14
15

16 AGENT:

17 Name:
18 Telephone Number:
19 Acceptance of Appointment:
20 Signature of Agent:
21 Date of Signature:

22 SUCCESSORS:

23 If my agent dies, becomes legally disabled, resigns, or
24 refuses to act, I hereby appoint the following persons
25 (each to act alone and successively, in the order named) to
26 serve as my agent (attorney-in-fact) to control the
27 disposition of my remains as authorized by this document:

28 1. First Successor

29 Name:

1 Address:

2 Telephone Number:

3 Signature Indicating Acceptance of Appointment:

4 Date of Signature:

5 2. Second Successor

6 Name:

7 Address:

8 Telephone Number:

9 Signature Indicating Acceptance of Appointment

10

11 Date of Signature:

12 DURATION:

13 This appointment becomes effective upon my death.

14 PRIOR APPOINTMENTS REVOKED:

15 I hereby revoke any prior appointment of any person to

16 control the disposition of my remains.

17 RELIANCE:

18 I hereby agree that any cemetery organization,

19 business operating a crematory or columbarium or both,

20 funeral director or embalmer, or funeral establishment who

21 receives a copy of this document may act under it. Any

22 modification or revocation of this document is not

23 effective as to any such party until that party receives

24 actual notice of the modification or revocation. No such

25 party shall be liable because of reliance on a copy of this

26 document.

27 ASSUMPTION:

28 THE AGENT, AND EACH SUCCESSOR AGENT, BY ACCEPTING THIS

29 APPOINTMENT, AGREES TO AND ASSUMES THE OBLIGATIONS

1 PROVIDED HEREIN.

2 Signed this day of,

3 STATE OF

4 COUNTY OF

5 BEFORE ME, the undersigned, a Notary Public, on this
6 day personally appeared, proved to me
7 on the basis of satisfactory evidence to be the person
8 whose name is subscribed to the foregoing instrument and
9 acknowledged to me that he/she executed the same for the
10 purposes and consideration therein expressed.

11 GIVEN UNDER MY HAND AND SEAL OF OFFICE this day
12 of, 2.....

13 Printed Name:

14 Notary Public, State of

15 My Commission Expires:

16".

17 Section 15. Requirements for written instrument. A written
18 instrument is legally sufficient under Section 5 if the wording
19 of the instrument complies substantially with Section 10, the
20 instrument is properly completed, the instrument is signed by
21 the decedent, the agent, and each successor agent, and the
22 signature of the decedent is notarized. The written instrument
23 may be modified or revoked only by a subsequent written
24 instrument that complies with this Section.

25 Section 20. Duties of authorized agent.

1 (a) A person listed in Section 5 has the right, duty, and
2 liability provided by that Section only if there is no person
3 in a priority listed before the person.

4 (b) If any person who would otherwise have the right to
5 control disposition pursuant to Section 5 has been charged with
6 first or second degree murder or voluntary manslaughter in
7 connection with the decedent's death and those charges are
8 known to the funeral director or cemetery authority, that
9 person's right to control is relinquished and passed on to the
10 next listed person or group of persons in accordance with
11 Section 5.

12 Section 25. Body parts. In the case of body parts, a
13 representative of the institution that has arranged with a
14 funeral home, cemetery, or crematory authority to cremate or
15 make other appropriate disposition of the body parts may serve
16 as the authorizing agent.

17 Section 30. Prohibition of cremation; written
18 instructions. No person shall be allowed to authorize cremation
19 when a decedent has left written instructions that he or she
20 does not wish to be cremated.

21 Section 35. Misrepresentation; liability. A person who
22 represents that he or she knows the identity of a decedent and,
23 in order to procure the disposition, including cremation, of
24 the decedent's remains, signs an order or statement, other than
25 a death certificate, warrants the identity of the decedent and
26 is liable for all damages that result, directly or indirectly,
27 from that warrant.

28 Section 40. Directions by decedent.

29 (a) A person may provide written directions for the
30 disposition, including cremation, of the person's remains in a
31 will, a prepaid funeral, burial or cremation contract, or in a
32 written instrument signed by the person and notarized. The

1 directions may be modified or revoked only by a subsequent
2 writing signed by the person and notarized. The person
3 otherwise entitled to control the disposition of a decedent's
4 remains under this Act shall faithfully carry out the
5 directions of the decedent to the extent that the decedent's
6 estate or the person controlling the disposition are
7 financially able to do so.

8 (b) If the directions are in a will, they shall be carried
9 out immediately without the necessity of probate. If the will
10 is not probated or is declared invalid for testamentary
11 purposes, the directions are valid to the extent to which they
12 have been acted on in good faith.

13 Section 45. Liability. A cemetery organization, a business
14 operating a crematory or columbarium or both, a funeral
15 director or an embalmer, or a funeral establishment shall not
16 be liable for carrying out the written directions of a decedent
17 or the directions of any person who represents that the person
18 is entitled to control the disposition of the decedent's
19 remains.

20 Section 50. Disputes. Any dispute among any of the persons
21 listed in Section 5 concerning their right to control the
22 disposition, including cremation, of a decedent's remains
23 shall be resolved by a court of competent jurisdiction. A
24 cemetery organization or funeral establishment shall not be
25 liable for refusing to accept the decedent's remains, or to
26 inter or otherwise dispose of the decedent's remains, until it
27 receives a court order or other suitable confirmation that the
28 dispute has been resolved or settled.

29 (410 ILCS 18/15 rep.)

30 Section 300. The Crematory Regulation Act is amended by
31 repealing Section 15.